

BEFORE THE
STATE BOARD OF PHARMACY
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY,)	
)	
Petitioner,)	
)	
v.)	Case No. 2008-006426-V1
)	
JONATHAN POYNTER,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE**

This matter appears before the Missouri Board of Pharmacy pursuant to a Probation Violation Complaint regarding Jonathan Poynter, Respondent.

Findings of Fact

1. The Board set this matter for hearing and served notice violation of the discipline hearing upon Poynter.
2. Pursuant to notice and Section 621.110, RSMo, this Board held a hearing on April 29, 2009, at the Courtyard by Marriott, 3301 LeMone Industrial Boulevard, Columbia, Missouri, for the purpose of determining the appropriate disciplinary action against the pharmacist license of Poynter. Poynter appeared with counsel Harvey Tettlebaum. The Board was represented by Loretta Schouten. See pages 5 and 6 of the transcript.
3. All Board members were present throughout the violation of discipline hearing.

4. The Missouri Board of Pharmacy ("Board") is an agency of the state of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

5. Respondent is licensed by the Board, License No. 2003010532, which license was current and active at the time of the incidents which form the basis of the charge, and which is scheduled to expire on October 31, 2010. See transcript page 4.

6. The Board and Poynter entered into a Settlement Agreement Between Missouri Board of Pharmacy and Jonathan Poynter on or about January 8, 2006, wherein Poynter's pharmacist license was suspended for three (3) years retroactive to March 8, 2005, followed by five (5) years probation. See transcript pages 6 and 7 and Board Exhibit 1. Pursuant to the Settlement Agreement, Poynter had certain obligations during the disciplinary period, which included taking and passing the Multistate Pharmacy Jurisprudence Examination on or before March 7, 2008. Respondent Poynter did not take and pass that examination until October 4, 2008. See transcript pages 6, 9, 18, and 19, and Board Exhibit 1.

7. Respondent was obligated under the terms of the Settlement Agreement to obtain a certain number of internship hours before the beginning of the period of probation, which started on March 8, 2008. Poynter did not complete those internship hours as required by the Settlement Agreement. See pages 9 and 10 of the transcript.

8. Respondent asserted that he did not complete the internship hours as required by the Settlement Agreement because the United States Department of Health and Human Services excluded him from participating in any federally funded health care program until at least September 20, 2012. See transcript pages 10 and 11. Respondent has not attempted to obtain a waiver from the United States Department of Health and Human Services to participate in such programs. See transcript page 19. Respondent is unaware of any licensed pharmacy in the state of Missouri that does not participate in a federal reimbursement program. See transcript pages 20 and 21.

9. Respondent did not take the Multistate Pharmacy Jurisprudence Examination on or before March 7, 2008, because he did not correctly place the required date in his electronic calendaring system. See transcript pages 12, 13, and 19.

10. The Settlement Agreement provides that if the Board determines that the Licensee has violated a term or condition of the Order, which violation would also be actionable in a proceeding before the AHC or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by the Order in its determination of appropriate legal actions concerning that violation. See Board Exhibit 1, page 16.

11. The Settlement Agreement also provides that no order shall be entered by the Board pursuant to the preceding paragraph without notice and an opportunity for a hearing before the Board in accordance with the provisions of Chapter 536, RSMo. See Board Exhibit 1, page 16.

Conclusions of Law

12. The Board has jurisdiction over this proceeding in that the Probation Violation Complaint presents a case in which the Board must determine whether or not a licensee has violated a condition or conditions of a disciplinary order issued by the Board. State Board of Registration for the Healing Arts v. Masters, 512 S.W.2d 150, 160-161 (Mo. App., K.C.D. 1974).

13. The Board has jurisdiction to take disciplinary action against Respondent in that Respondent has violated the Order.

14. Respondent's license to practice as a pharmacist, numbered 2003010532, is subject to revocation, suspension, probation, or censure by the Board pursuant to the provisions of Section 338.055.2(1), (5), (6), (13), (15), and (17), RSMo.

Order

THEREFORE, having considered all of the evidence before the Board, it is the ORDER of the Missouri Board of Pharmacy that the pharmacist license issued to

Respondent Jonathan Poynter, numbered 2003010532, be placed on PROBATION for five (5) years ("disciplinary period"). The terms of discipline shall be as follows:

1. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the Board a list of locations worked if requested by the Board or Board's representative.

2. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

3. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

5. If, after disciplinary sanctions have been imposed, the Respondent ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

6. Respondent shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this Disciplinary Order within five (5) business days of the date of this Order or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this Disciplinary Order prior to or at the time of any scheduled work assignments.

7. Respondent shall not serve as a preceptor for interns.

8. If applicable, Respondent shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state and federal registrations for the purpose of storing, distributing or dispensing controlled substances.

9. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after the date of this Order, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

10. Respondent shall participate in the Board's random drug testing/urinalysis program administered by FirstLab, the Board's approved drug testing/urinalysis vendor. Licensee shall enroll in FirstLab's Professional Health Monitoring Program as directed by the Board or the Board's designated representative. Respondent shall comply with all requirements imposed by FirstLab for the drug testing/urinalysis program, including, but not limited to, any drug test/urinalysis requirements, any testing/urinalysis scheduling requirements, any Respondent reporting or telephone contact requirements designated by FirstLab and any requirements for purchasing/maintaining chain of custody (COC) forms or other required program documents/materials.

11. Respondent shall undergo periodic drug testing/urinalysis as requested by the Board or FirstLab, at Respondent's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

12. If the Board's approved drug testing/urinalysis vendor changes, Respondent shall participate in and comply with any drug testing/urinalysis requirements requested by the Board.

13. Respondent shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

14. Respondent shall provide the Board office, within 10 days of the effective date of this Order, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Respondent's possession on the effective date of discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription.

15. Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona fide relationship as a patient. Upon request, Respondent shall execute a medical release authorizing the medical professional that prescribed the controlled substance or other drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding Respondent's treatment. The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription shall constitute a violation of discipline. Respondent shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Respondent's receipt of the prescription.

16. Respondent shall inform any professional preparing a prescription for Respondent that Respondent is chemically dependent.

17. Respondent shall, along with another Missouri-licensed pharmacist, conduct a perpetual inventory of all controlled substances at his place of employment upon the beginning date of discipline or on the first date of employment within any establishment that maintains an inventory of controlled substances. All drugs shall be physically counted with no estimation. The inventory must be signed and dated by both the Respondent and the other pharmacist attesting to its accuracy. The required inventory must be completed prior to or at the time of any scheduled work assignments. The perpetual inventory shall be reconciled with an audit of pharmacy

inventory on a monthly basis. The perpetual inventory and proof of reconciliation shall, upon request, be immediately available to a member of the Board or the Board of Pharmacy staff.

18. Respondent shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

19. Respondent must complete 500 hours of internship training in a Missouri-licensed pharmacy under the direct supervision of a Missouri-licensed pharmacist, and submit evidence of said completion prior to practicing independently as a pharmacist. The 500 hours must be obtained before the final 120 days of the probationary period.

20. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this Disciplinary Order.

21. The Missouri Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

22. Should Respondent violate any term or condition of this disciplinary order or any provision of Chapter 338, RSMo, the Board of Pharmacy may vacate the order of discipline imposed herein and order such further or additional discipline as the Board deems appropriate, including, but not limited to, revocation, suspension, and/or probation against the pharmacist license of Respondent. No additional order shall be entered by this Board pursuant to this paragraph of this Order without notice and an opportunity for hearing before the Board of Pharmacy as a contested case in accordance with the provisions of Chapter 536, RSMo.

23. Upon the expiration of the period of discipline, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Order, or any provision of Chapter 338, RSMo, the Board, may in its discretion, vacate and set aside the terms and conditions of this Order and order such further or additional discipline as the Board deems appropriate.

24. If the Board determines that Respondent has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the

Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

ENTERED THIS 2nd DAY OF JULY, 2009

(BOARD SEAL)



KIMBERLY A. GRINSTON
EXECUTIVE DIRECTOR
MISSOURI BOARD OF PHARMACY